

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: O-401

DATE: October 9, 2013

TO: Subcommittee on Educational Standards

FROM: George Leal, Director, Educational Standards

SUBJECT: Interpretation of Guideline 12.1 in the Calculation of an Accredited Law School's Cumulative Bar Examination Pass Rate

BACKGROUND

Last year, the Committee established and adopted a new accreditation standard that is based upon a "minimum, cumulative bar examination pass rate" (CBEPR). As now required by Rule 4.160(M), each CALS "must maintain a minimum, cumulative bar examination pass rate as determined and used by the Committee in the evaluation of the qualitative soundness of a law school's program of legal education."

To enforce this new standard, the Committee also adopted two new Guidelines, each of which went into effect this past January. They are Guideline 12.1 and 12.2. Guideline 12.1 sets the current, minimum CBEPR at 40% and requires that each CALS report its respective CBEPR as a rolling, annual percentage to be calculated by dividing the total number of its graduates who take and pass any administration of the California Bar Examination (CBX) over the past five years (a total of 10 administrations) by the total number of its graduates who take CBX (whether they pass or fail) over the same five-year period of time. Guideline 12.2 mandates that if a law school is not in compliance with the 40% minimum CBEPR by the end of this year, the Committee will issue the law school a Notice of Noncompliance pursuant to Rule 4.170 of the Rules.

As set out in a notation to Guideline 12.2, each CALS is to calculate and report its CBEPR in its 2013 Annual Compliance Report. As a result, the need to calculate and report this new accreditation metric accurately is a matter of significant importance to all CALS, as well as to the Committee. Since the adoption of Guideline 12.1 late last year, several CALS Deans have expressed their concern as to its potential ambiguity in determining the appropriate time period and administrations of the CBX that should be used to calculate and report their school's CBEPR accurately. To address these concerns, and to ensure uniform and consistent reporting among all the CALS, an interpretation by the Committee as to the appropriate means to calculate and report an accurate CBEPR now appears both timely and necessary.

DISCUSSION

The Deans' primary concern as they calculate and report their schools' 2013 CBEPRs relates to which five calendar years and, thus, which 10 administrations of the CBX should be used to calculate their graduates' cumulative pass rate. Guideline 12.1 refers only to the CBEPR as being a "percentage of all of the school's students who (a) have graduated from the school within the past five years and (b) have taken and passed one of the ten administrations of the California given following their graduation, divided by the total number of the school's graduates over the same five years who take any of those same ten administrations of the California Bar Examination."

The first issue to be resolved is whether to allow the results of the July 2013 CBX administration to be used in the calculation of a 2013 CBEPR. Since the pass results for the July CBX administration will not be available to the law schools until November 25th, moving the submission deadline for the CALS 2013 Annual Compliance Report to December 15th should allow the schools to use the most recent results of its graduates in its 2013 CBEPR calculation, which has been recommended in Open Agenda Item O-400.

The next issue relates to whether the results of the February 2009 CBX administration should be used even though most if not all CALS graduates who took that administration graduated from their law school in 2008. The issue and ambiguity is highlighted by the fact that if a CALS graduate took and passed the February 2009 CBX, they should not be counted since, as required by Guideline 12.1, they did not graduate from law school "within the past five years" for purposes of a 2013 CBEPR.

This issue is not unique to the inaugural calculation of a CBEPR since in any future five year period of time, any graduate of a CALS who eventually passes the CBX after a number of attempts and more than five years since they graduated, will also not be counted for purposes of a CBEPR for any, more recent five-year period of time.

The issue for the Committee to consider and decide is whether to interpret Guideline 12.1, so as to allow an accurate and consistent CBEPR calculation by the CALS in their 2013 Annual Report, by allowing the CALS to use the pass results of their graduates on the February 2009 administration of the CBX, even if those taking and passing the examination graduated in 2008, or to allow a one-time exception to the calculation of a CALS CBEPR such that only nine administrations (July 2009 through July 2013) be used to calculate and report a law school's CBEPR for 2013.

RECOMMENDATION

This issue will be on the agenda for consideration by the Committee's California-Accredited Law School Rules Advisory Committee (RAC) during its meeting, which is the day prior to the Subcommittee's October meeting, so it is possible that a recommendation from RAC will be reported to the Subcommittee.

PROPOSED MOTION

Pending.